

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	Case No. 4:13CR 3121
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JOSEPH BENZ,	)	
	)	
Defendant.	)	

MOTION FOR DOWNWARD DEPARTURE/VARIANCE

Comes now the Defendant, by and through counsel and pursuant to U.S.S.G. §5K2.0, 5H1.3 and 18 U.S.C. §3553(a), moves the court to impose a sentence below the advisory guideline range, for the following good and sufficient reasons, to wit:

1. Departure: A Guideline Sentence conflicts with § 3553(a)'s directive to impose a sentence "sufficient but not greater than necessary."
2. Departure: The Sentencing Guidelines fail to adequately account for the Defendant's mental impairment caused by his prescription medications.
3. Departure - That given the diminished capacity of the Defendant, the offense is outside the heartland of such offenses.
4. Variance: Incarceration is not necessary for the punishment or rehabilitation of the defendant as the chemically induced mental condition that cause the defendant to engage in the offending conduct is not likely to occur in the future.

WHEREFORE, the Defendant prays that the Court depart or vary from the Sentencing Guidelines in this case and impose a sentence of probation within Zone A or Zone B with any period of incarceration to be served on home detention or

community custody.

JOSEPH BENZ, Defendant

*s/Robert B. Creager*

Robert B. Creager # 15370  
ANDERSON, CREAGER &  
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Attorney for Defendant

**CERTIFICATE OF SERVICE**

I certify that on July 29, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a copy to:

Steve Russell

Dated: July 29, 2016.

*s/Robert B. Creager*

Robert B. Creager # 15370